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**OFFICE OF PETITIONS**

In re Application :  
Guy L. Steele, Jr. :  
Application No. 10/035,746 : DECISION ON APPLICATION  
Filed: December 28, 2001 : FOR PATENT TERM ADJUSTMENT  
Docket No. 06502.0371-00000 :

This is a decision on the "NOTICE OF ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT," filed June 28, 2006. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **five hundred eighty (580) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 27, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date was seven hundred, fifty-nine (759) days.

The Office initially determined a patent term adjustment of seven hundred fifty-nine (759) days based on an adjustment for PTO delay of five hundred seventy-two (572) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), <sup>five</sup> ~~one~~ (45) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. § 1.703(a)(2), and one hundred forty-nine (149) days pursuant to

35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. § 1.703(a)(3), reduced by seven (7) days of applicant delay pursuant to 37 C.F.R. § 1.704(c)(8). The adjustments of 572, 45, and 7 days have been reviewed and found to be correct. The adjustment of 149 days is at issue.

The adjustment of one hundred forty-nine (149) days has been determined to be incorrect. Applicant filed an Amendment after a Notice of Appeal on March 21, 2006. The Office timely mailed a Notice of Allowance on April 27, 2006. Accordingly, the Office should not have been assessed one hundred forty-nine (149) days. No days of PTO delay should have been assessed in this instance.

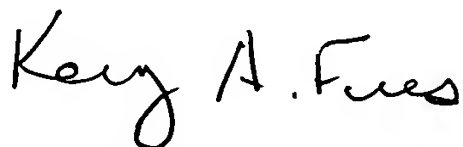
Moreover, Applicant should have been assessed additional delay of thirty (30) days. The Office mailed a final action on May 31, 2005. Applicant did not file a proper reply until a Notice of Appeal on September 30, 2005. Accordingly, pursuant to 37 C.F.R. 1.704(b), applicant delay of thirty (30) days should have been assessed.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **five hundred eighty (580) days** (617 (572+45) days of PTO delay, reduced by 37 (7+30) days of applicant delay).

No fee has been charged. The Office thanks applicant for his good faith and candor in bringing this matter to the Office's attention.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



Kery Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen